

## REMARKS/ARGUMENTS

The present amendment is submitted in response to the Office Action received from the United States Patent Office dated September 24, 2008. In the Office Action, the Patent Office rejected Claims 10-13 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Further, the Patent Office rejected Claims 1-3, 5, 16-17, and 21 under 35 U.S.C. § 103(a) as being unpatentable over *Tamura* (U.S. Patent Number 6,932,427) in view of *Caicedo* (U.S. Patent Number 6,145,716). Moreover, the Patent Office rejected Claims 4, 6-15, and 18-20 (Claims 10-13, as best understood) under 35 U.S.C. § 103(a) as being unpatentable over *Tamura* in view of *Caicedo*, as modified above, and in further view of *Ezquerria* (U.S. Patent Number 3,290,050). Finally, the Patent Office states that applicant's amendments to Claims 2 and 8 have overcome the rejection under 35 U.S.C. § 102 as being anticipated by *Caicedo* and the rejections have been withdrawn.

The Patent Office rejected Claims 10-13 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Patent Office states that Claim 10 recites the limitation "the extensions" in line 1. There is insufficient antecedent basis for these limitations in the claims. Note: Applicant states that claim 10 has been amended, however no amendment was found to the claim in the response filed on June 6, 2008. Applicant has amended Claim 10 to read "the grip members" and to more particularly point out and distinctly claim the subject matter which it regards as the invention.

The Patent Office further rejected Claims 1-3, 5, 16-17, and 21 under 35 U.S.C. § 103(a) as being unpatentable over *Tamura* (U.S. Patent Number 6,932,427) in view of *Caicedo* (U.S. Patent Number 6,145,716). *Tamura* teaches in Figures 1-5 and respective portions of the specification of a collapsible stroller with: a configuration is a stroller configuration wherein the stroller backpack comprises a seat assembly adapted to receive a child (see Figure 1 and Col. 1, line 8 where it is disclosed that the seat is adapted for a child); and another configuration is a portable backpack configuration wherein the stroller is adapted to be pushed or pulled along the ground using a handle (15) extended from the stroller backpack while the seat assembly is not

adapted to receive a child (see for example Figure 4). *Tamura* discloses the claimed invention including a third configuration (Figure 3) where the seat assembly is folded out of the way and the carrier is used as a suitcase. *Tamura* does not teach of shoulder straps for using the carrier as a backpack. The Patent Office states that *Caicedo* teaches in Figures 1-10 and respective portions of the specification of a backpack that contains a seat that can be folded into a use position. In addition, the Patent Office states that it would have been obvious to one having ordinary skill in the art at the time of invention to combine the familiar shoulder straps taught by *Caicedo*, located on the opposite side of the container (11) as the seat (21), with the suitcase structure taught by *Tamura* (Figure 3) to allow the user to transport the suitcase over an uneven running surface with the user's hands free; additionally, such a combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results (see MPEP 2143(A)). Further, in re claim 3, see Figure 1 of *Tamura* where the seat (21) projects from the container. Furthermore, in re claims 17 and 21, the method of changing the configuration of the stroller backpack outward from the container away from the handle (Figure 2 of *Tamura*) and then collapsing the seat and handle (Figure 3 of *Tamura*) is inherently performed by the apparatus taught by *Tamura* and as modified by *Caicedo*.

*Tamura* discloses a suitcase with a foldable chair usable as a normal suitcase and also usable as a cart, a chair or a buggy, comprising a suitcase body, a pair of wheels attached onto the bottom surface of the suitcase body near the rear surface, a foldable base plate rotatably installed on the front surface side of the suitcase body at the lower position, a pair of wheels fitted to the tip of the foldable base plate, fixing devices fixing the foldable base plate to the suitcase body, a foldable seat plate rotatably installed on the front surface of the suitcase body at the position over the installed the foldable base plate, and auxiliary rails oppositely installed on both sides of the foldable base plate rotatably relative to the suitcase body.

*Tamura* does not disclose, teach, or suggest a backpack. On the contrary, *Tamura* distinguishes in the specification the suitcase from a portable carrying case, a cloth-made bag with a handgrip, by admitting that the hand-bag is “too small to make the [bag] usable as a suitcase” (*Tamura*, col. 1, ll. 31-35). Similarly, *Tamura* states that the suitcase provides an advantage since it is not “limited to an extremely small amount like the conventional carrying case” (*Tamura*, col. 1, ll. 50-53). The suitcase disclosed by *Tamura* is intended to be used for overseas travel and includes a pair of wheels attached onto the bottom surface (*Tamura*, col. 2, ll.

11, 16-17). More specifically, the suitcase of *Tamura* is not intended to be carried (*see Tamura*, col. 1, ll. 33-35, 50-53; col. 3, ll. 19-25). It would not have been obvious to one having ordinary skill in the art to combine a shoulder strap to a suitcase for travel. Applicant is unaware of any individual that would put shoulder straps on a suitcase. In fact, Applicant does not know of ANY suitcase that has shoulder straps attached thereto. Applicant respectfully submits that the Patent Office is comparing non-analogous arts with respect to the person of ordinary skill test.

Moreover, the term backpack was defined with the specification of the invention as: “is an apparatus comprising a bag or other container that is designed to allow someone to carry articles, not people, within the bag and on their back, possibly by providing it with should[er] straps.” The Patent Office argues that *Tamura* discloses the claimed invention that includes the third configuration claimed by the applicant. However, *Tamura* does not disclose “a portable backpack configuration wherein the stroller backpack is adapted to be pushed or pulled along the ground using a handle extended from the stroller backpack” as required by Claims 1, 2 and 16.

*Caicedo* discloses generally a U-shaped seat frame that defines a crossmember and side portions terminating in a pair of ends. A seatback frame provides a second generally U-shaped member having a second crossmember and side portions which terminate in a pair of acutely angled support members. The ends of the seat frame are pivotally secured to the support members of the seatback frame. A fabric seat web is secured to the side portions of the seat frame while a backpack is secured to the seatback frame. The seat frame is pivotable with respect to the seatback frame between an open position forming a chair and a closed position in which the seatback frame and seat frame are locked together on the rear portions of the backpack.

However, if when combined, neither *Caicedo* nor *Tamura*, taken singly or in combination teach or suggest the invention taught in the present invention. More specifically, the present invention requires at least a first configuration as a stroller configuration wherein the stroller backpack comprises a seat assembly adapted to receive a child. Although *Caicedo* teaches the backpack portion, it does not teach the stroller portion. Moreover, although *Tamura* teaches a stroller, it does not teach a stroller backpack as required by the claim language. Therefore neither *Caicedo* nor, *Tamura*, taken singly or in combination teach the present invention. The Patent Office states it would be obvious to combine familiar elements to yield predictable results.

However, as this has never been done, and is not contemplated in the prior art, it would not be obvious to one of ordinary skill in the art.

The Patent Office further rejected Claims 4, 6-15, 18-20 (claims 10-13, as best understood under 35 U.S.C. § 103(a) as being unpatentable over *Tamura* in view of *Caicedo*, as modified above, and in further view of *Ezquerria* (U.S. Patent Number 3,290,050). The Patent Office states *Tamura* as modified by *Caicedo* disclose a handle (15), but do not teach of a rotatable handle and two grip members moveably coupled to the handle. *Ezquerria* teaches of an adjustable handle (Figure 1, element 17) for a stroller that allows two grip members placement to be adjusted; see reference numeral 20 that are taken to be grip members allowed to translate longitudinally within handlebar 17 (see arrowheads located above handlebar).

The Patent Office states that it would have been obvious to one having ordinary skill in the art at the time of invention to provide the adjustable handle structure, as taught by *Ezquerria*, in the invention taught by *Tamura* and as modified by *Caicedo* to allow the handle to be placed at an ergonomic position for the user.

Further, the Patent Office states that in regards to claims 18-20 the method is inherently performed by the apparatus taught by *Tamura* and as modified by *Caicedo* and *Ezquerria*. Additionally, it would have been obvious to one having ordinary skill in the art at the time of invention to provide a zipper to store the seat, as shown by *Tamura* in Figure 1, as an obvious engineering expedient.

However, Applicant respectfully disagrees. *Ezquerria* simply teaches a simple transport device that may be adapted to use as a stand. No reference is made to any carrying receptacle at all. Therefore, the only additionally element being introduced is the concept of a handle structure. As stated earlier, it is common to find elements somewhere in the art. However, the *Ezquerria* patent only teaches the use as a transport assembly utilizing the handle structure. No motivation is provided to combine it with any other reference and further even if the result is a predictable variation, the modifications to the *Ezquerria* patent would be significantly difficult to undertake in order to include the other parameters of the present invention. Therefore, KSR obviousness would not apply here.

It is further submitted that the question under § 103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. *In re Simon*, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most if not all elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of the teaching of the reference, would have been obvious to one of ordinary skill in the art at the time the invention was made. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

It is insufficient that the art disclosed component's of Applicants' invention. A teaching, suggestion, or incentive must exist to make the combination made by Applicants. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

In view of the foregoing remarks and amendments, the rejection of Claims 1,-3, 5, 16-17, and 21 under 35 U.S.C. § 103(a) as being unpatentable over *Tamura* in view of *Caicedo* has been overcome. Similarly, the rejection of Claims 4, 6-15 and 18-20 under 35 U.S.C. § 103(a) as being unpatentable over *Tamura* in view of *Caicedo*, and further in view of *Ezquerria* has been overcome. Notice to that effect is requested.

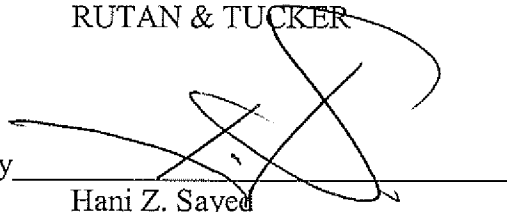
Claims 3, 5-7 depend from Claim 2; Claims 9,10, and 12-13 depend from Claim 8, Claim 15 depends from Claim 14, Claims 18-21 depend from Claim 17. Claims 4 and 11 have been cancelled. These claims are further believed to be allowable for the same reasons set forth with respect to independent Claims 2, 8, 14, and 17, since each sets forth additional novel elements and steps of Applicant's Collapsible Stroller Backpack.

In view of the foregoing remarks, Applicant respectfully submits all of the claims in the application are in allowable form and that the application is now in condition for allowance. If any outstanding issues remain, Applicant urges the Patent Office to telephone Applicant's attorney so that the same may be resolved and the application expedited to issue. Applicant requests the Patent Office to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,  
RUTAN & TUCKER

Dated: November 24, 2008

By



Hani Z. Sayed  
Registration No. 52,544

Rutan & Tucker, LLP  
611 Anton Blvd., Suite 1400  
Costa Mesa, CA 92626  
Telephone (714) 641-5100  
Facsimile (714) 546-9035